

1  
2  
3  
4  
5  
6                   UNITED STATES DISTRICT COURT  
7                   EASTERN DISTRICT OF WASHINGTON  
8

9                   UNITED STATES OF AMERICA,  
10                   Plaintiff,  
11                   v.  
12                   JOSHUA WARREN HOLLOWAY,  
13                   Defendant.

14                   NO. CR-09-2015-EFS

15                   **ORDER DENYING DEFENDANT'S  
16                   MOTION FOR RECONSIDERATION OF  
17                   DENIAL OF MOTION TO SUPPRESS  
18                   EVIDENCE**

19                   Before the Court, without oral argument, is Defendant Joshua Warren  
20                   Holloway's motion to reconsider the Court's denial of his suppression  
21                   motion. (Ct. Rec. 56.) After reviewing Defendant's submitted  
22                   materials,<sup>1</sup> the Court abides by its earlier ruling.

23                   During the early morning hours, the vehicle Defendant was riding in  
24                   was stopped by Officer Chad Urwin for failure to utilize a left turn  
25                   signal. At the suppression hearing, Officer Urwin testified that he was  
26                   "trailing" the subject vehicle on a parallel street at an angle that  
                 allowed him to see the tail and brake lights. Officer Urwin testified  
                 that he did not observe the vehicle activate its left turn signal 100

---

27                   <sup>1</sup> The Government was instructed not to respond absent Court order  
28                   to do so. (Ct. Rec. 68.)

feet prior to turning left into a parking lot, as is required by Washington traffic law. Based on this traffic infraction, Officer Urwin pulled over the vehicle. Officer Urwin's testimony that he was able to observe tail and brake lights and did not observe the use of a left turn signal satisfied the Government's burden of producing specific and articulable facts supporting suspicion of a traffic violation. See *United States v. Willis*, 431 F.3d 709, 715 n.5 (9th Cir. 2005) (citing *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). The burden then shifted to Defendant to prove that the vehicle was stopped in violation of the Fourth Amendment. See *id.* As explained below, the Court concludes Defendant did not satisfy this burden.

Defendant relies on the National Highway Traffic Safety Administration's vehicle lighting requirements pertaining to visibility and intensity<sup>2</sup> to argue that Officer Urwin's reported observation of lack of a turn signal is per se unreasonable given the angle at which the officer was driving in relation to the subject vehicle. The Court recognizes that the regulations do not require a turn signal to be viewed from the angle at which Officer Urwin was located. Therefore, if the subject vehicle's left turn signal only satisfied the regulation's minimal visibility and intensity requirements, Officer Urwin made a "mistake of fact." See *New Mexico v. Hubble*, 206 P.2d 579, 585-87 (N.M.

2 This requirements have been adopted by Washington. WAC 204-10-  
24  
021 & WAC 204-10-012. In particular, Defendant relies upon Table III  
25  
from 49 CFR 571.108 (1992) - the regulation in effect at the time the  
26  
subject vehicle was manufactured.

1 2009) (discussing mistake of fact and mistake of law in context of turn  
2 signal infraction).

3       A vehicle stop based on an officer's mistaken factual belief is  
4 upheld so long as the factual mistake was 1) reasonable and 2) made in  
5 good faith. *United States v. Twilley*, 222 F.3d 1092, 1096 n.1 (9th Cir.  
6 2000); see also *United States v. Lopez-Soto*, 205 F.3d 1101 (9th Cir.  
7 2000). Consistent with the Court's prior finding, the Court finds  
8 Officer Urwin's testimony credible and therefore concludes that any  
9 mistaken observation as to the lack of a turn signal was made in good  
10 faith. The central question is whether Officer Urwin's possible mistaken  
11 factual observation was reasonable. Defendant's submitted charts and  
12 graphs are helpful; however, the Court finds them insufficient to prove  
13 that the stop was unreasonable. There was no testimony by any witness  
14 or anyone in the stopped vehicle that the left turn signal had been  
15 activated before or at the 100 foot mark. Therefore, Officer Urwin's  
16 testimony that no turn signal was used is unrefuted. Further, the  
17 relied-upon regulations are generic and do not analyze the subject  
18 vehicle's turn signal visibility and intensity. Accordingly, if Officer  
19 Urwin was mistaken that the driver failed to properly signal, this  
20 factual mistake was reasonable.

21       In summary, reasonable suspicion existed, i.e., there are  
22 articulable facts providing an objective basis for a belief that the  
23 driver failed to indicate a left turn 100 feet before turning into the  
24 parking lot. See *Terry*, 371 U.S. at 30 (1968); *Lopez-Soto*, 205 F.3d at  
25 1105. Therefore, **IT IS HEREBY ORDERED:** Defendant's Motion for  
26

1 Reconsideration of Denial of Motion to Suppress Evidence (**Ct. Rec. 56**)  
2 is **DENIED**.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
4 this Order and to provide copies to all counsel.

5 **DATED** this 3rd day of August 2009.

6  
7 s/ Edward F. Shea  
8 EDWARD F. SHEA  
United States District Judge

9  
10 Q:\Criminal\2009\2015.reconsid.wpd  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26